



JOSEPH A. BAHGAT
Managing Attorney
+1 215 995 5001
joe@privacyfirm.law

1701 Walnut St. Ste 70354
P O Box 37635
Philadelphia PA 19101-0635

5 June 2019

BY FACSIMILE

The Honorable Joel H. Slomsky
U.S. District Court, Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse, R.m 13614
601 Market Street
Philadelphia, Pennsylvania 19106

Re: Strike 3 Holdings, LLC v. Bordley
No. 2:18-cv-00868-JHS

Your Honor:

I am writing on behalf of defendant George Bordley, to correct misstatements made yesterday in a letter from my adversary, John Atkin, Esq.

First and foremost, I did not agree to another extension of fact discovery. What I said to Mr. Atkin was that defendant provided all the requested discovery to plaintiff months ago—prior to Mr. Atkin's appearance in the case—but as a matter of courtesy, that I would agree to an extension if he demonstrated to me that my client has failed to provide some discovery that was preventing plaintiff from moving the case forward. Mr. Atkin never identified any discovery that was still outstanding, and instead submitted his letter to Your Honor, which doesn't fairly represent the substance of our discussion.

Although Mr. Atkin now claims that defendant has still not provided complete responses to Interrogatory No. 3, and Requests for Production Nos. 1, 11, 13, 15, and 16, this is simply untrue. I am attaching to this letter defendant's excerpted response to Interrogatory No. 3, as well as the email from plaintiff's prior counsel, Drew Bonekemper, which, together with the attached chain of custody affidavits, confirms that defendant's hard drives were produced and imaged on Feb. 22, 2019.

LEGAL PROS FOR YOUR INTERNET WOESSM

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Hon. Joel H. Slomsky
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After plaintiff's expert had ample time to review defendant's hard drive contents, I had a discussion with Mr. Bonekemper, during which he confirmed that there was **no evidence of plaintiff's copyrighted works** on any of defendant's computer hard drives. Mr. Bonekemper asked if I would agree to postpone the April mediation and to extend expert discovery to allow plaintiff's expert to complete its report. In response I said that I would agree if plaintiff agrees not to enforce the monetary sanction awarded because plaintiff forgot to withdraw its motion to compel after defendant provided all the discovery.

In light of there being no direct evidence that defendant is the infringer, on Apr. 23, 2019, Mr. Bonekemper notified me that plaintiff was reducing its settlement demand to \$2,500, which is roughly 90% lower than plaintiff previous demand. Suddenly thereafter, and without any warning or notice, Mr. Bonekemper withdrew from plaintiff's representation. Now it seems that Mr. Atkin wants another bite at the apple—*i.e.* more time to fish for circumstantial evidence that might contradict the direct evidence plaintiff already has, proving that Mr. Bordley is NOT the infringer.

Defendant provided ALL requested discovery to plaintiff over three months ago, and plaintiff has done nothing to move the case forward since. Discovery has already been extended twice, both with and without consent, and in this situation, because defendant provided all the discovery months ago, plaintiff cannot meet the "good cause" standard for another discovery extension. I therefore object to plaintiff's request and respectfully request that the same be denied.

Respectfully yours,

Joseph A. Bahgat

JAB/kg
Enclosures

CC: All counsel of record (by email only)

or circumstances that may later come to respondent's attention. Respondent expressly reserves the right to further supplement, amend, or otherwise revise the below responses to interrogatories in accordance with Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 1. State YOUR full name, address, and phone number.

RESPONSE TO INTERROGATORY NO. 1:

George Bordley
403 Saginaw Road
New London, PA 19352
302-229-7632

INTERROGATORY NO. 2. IDENTIFY any courses, classes or certifications in school, college, or any other educational or instructional program that YOU have taken or attended to learn how to operate or program COMPUTER DEVICES and computer software.

RESPONSE TO INTERROGATORY NO. 2: Respondent obtained a bachelor of science in Information Technology from University of Phoenix.

INTERROGATORY NO. 3. IDENTIFY by brand, trademark, model number, version, serial number and by any other relevant form of identifier each of the COMPUTER DEVICES USED in your home during the last three years.

RESPONSE TO INTERROGATORY NO. 3: Respondent repeats the general objections to these interrogatories, and further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and disproportional to the claims in the complaint because it seeks information about individuals who are not parties to this lawsuit, some of whom may be or at all times relevant were minor children whose personal information might be contained on devices responsive to this interrogatory. Further, respondent objects because this interrogatory seeks information not relevant to the claims in the complaint and not likely to lead to the discovery of admissible evidence. Subject to and without waiving these objection(s), respondent is aware of the following devices having been used in the home within the past three years:

1. Dell Inspiron 3520 computer (#416jcv1)

2. multiple Apple iPads
3. Seagate portable backup drive
4. Apple MacBook Pro Model A1278 (3#)
5. Samsung Note 4
6. Apple iPhone X (3#)
7. Apple iPhone 6s (3#)
8. Apple MacBook Air Model A1466
9. Samsung Galaxy smartphone

INTERROGATORY NO. 4. For each COMPUTER DEVICE identified in Interrogatory No. 3, state the date each COMPUTER DEVICE was purchased and from where it was purchased.

RESPONSE TO INTERROGATORY NO. 4: Respondent repeats the objections and responses to the preceding request as if fully re-written herein. Subject to and without waiving the foregoing objections respondent states on information and belief that the above devices were purchased or acquired as follows:

1. Purchased from Dell, Nov. 2012
2. Purchased at Apple Store around Dec. 2014, and also purchased from private party seller around Feb. 2018
3. Purchased at Costco (Newark, DE) in 2015
4. Purchased at Apple Store, around Nov. 2015
5. Purchased at Costco (Newark, DE) around Sep. 2015
6. Purchased from Verizon Wireless, around Mar. 2018, Aug. 2018
7. Purchased at Best Buy (Newark, DE) around Jul. 2016
8. Borrowed from employer
9. Purchased at Costco (Newark, DE) around Jul. 2016

INTERROGATORY NO. 5. IDENTIFY each PERSON YOU authorized to have access to any COMPUTER DEVICE identified in Interrogatory No. 3 during the last three years, and state the duration during which each such PERSON had access.

RESPONSE TO INTERROGATORY NO. 5: Respondent repeats the general objections to these interrogatories, and further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and disproportional to the claims in the complaint because it seeks information about individuals who are not parties to this

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Joseph Bahgat <joe@privacyfirm.law>

Strike 3 v. Bordley

2 messages

Bonekemper, Andrew W. <ABonekemper@foxrothschild.com>

Fri, Feb 22, 2019 at 4:28 PM

To: joseph.bahgat <joe@privacyfirm.law>

Cc: "Bandlow, Lincoln D." <bandlow@foxrothschild.com> "Moffitt, Christian" <CMoffitt@foxrothschild.com>

Joe, attached are the receipts from TPS re: the return of the devices returned this afternoon.

Will you provide us with the address to return the hard drive? If Mr. Bordley was supposed to provide it, I do not have a record of it and he did not mention it.

Thanks.

Drew

Andrew Bonekemper
Partner
Fox Rothschild LLP
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001
(610) 397-7976 - direct
(610) 397-0450 - fax
ABonekemper@foxrothschild.com
www.foxrothschild.com



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joseph a. bahgat <joe@privacyfirm.law>


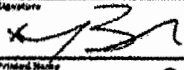
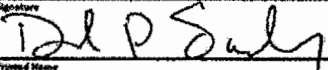

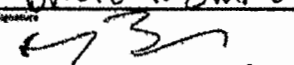
Mon, Feb 25, 2019 at 3:27 PM

To: "Bonekemper, Andrew W." <ABonekemper@foxrothschild.com>

Thanks Drew. Please have Mr. Bordley's hard drive sent to him at:

George Bordley
403 Saginaw Road
New London, PA 19352

Joseph a. bahgat

ORIGINAL PROPERTY CONTROL AND CHAIN OF CUSTODY DOCUMENT			
 TRANSPERFECT DIGITAL FORENSICS		CASE NUMBER	C2028079
		DM NUMBER	DM0153683
		EVIDENCE NUMBER	035-0002
DATE: 2/22/19	OFFICE: Philly	EXAMINER NAME	Brad e Bogan
CUSTODIAN INFORMATION			
NAME: George Bordley		LOCATION: Fox Rothschild	
SUBJECT DEVICE INFORMATION			
<input type="checkbox"/> Desktop <input checked="" type="checkbox"/> Laptop <input type="checkbox"/> Portable Device <input type="checkbox"/> Server <input type="checkbox"/> USB Device <input type="checkbox"/> Media Card <input type="checkbox"/> Other:			
MACHINE NAME		MANUFACTURER	Apple
TIME ZONE	PST	MODEL NUMBER	MacBook Pro
BIOS DATE/TIME	2/22/19 9:32 AM	SERIAL NUMBER	DX1SQ039F5WV
ACTUAL DATE/TIME	2/22/19 9:32 AM	ASSET TAG	
SUBJECT MEDIA INFORMATION			
MEDIA DESCRIPTION	"Kelly Bordley" (123) OS X El Capitan version 10.11.6 (A7 mode) Recon Fmager 2.0.3 thunderbolt to usb 3.0 to tough tech Flash encrypted (DMG)		
MANUFACTURER		HARD DRIVE SIZE	8
MODEL NUMBER		ENCRYPTION TYPE	
SERIAL NUMBER		ENCRYPTION KEY	
DESTINATION MEDIA INFORMATION			
STORAGE DRIVES	Primary 267638	Secondary 267640	
ENCRYPTION TYPE			
ENCRYPTION KEY			
COLLECTION DEVICE			
CHAIN OF CUSTODY			
REASON/ACTION	RELEASED BY	RECEIVED BY	DATE/TIME
RELEASED FOR ACQUISITION	Signature:  Printed Name: DAVID P. SMALEY	Signature:  Printed Name: GEORGE BORDLEY	Date: 02/22/19 Time: 0930 hrs
RETURN OF ITEM & RELEASE OF DATA	Signature:  Printed Name: DAVID P. SMALEY	Signature:  Printed Name: GEORGE BORDLEY	Date: 2/22/19 Time: 2/22/19

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5-Jun-2019 15:01

ORIGINAL PROPERTY CONTROL AND CHAIN OF CUSTODY DOCUMENT

CASE NUMBER

C 2028079